

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.D-5841 of 2018 along with
C.P. Nos. D-5528, D-5529, D-5530,
D-5531, D-5532, D-5533, D-5534
and D-6866 of 2019

Date	Order with Signature of Judge
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PRIORITY

1. For orders on Misc.No.13200/2021
2. For orders on Misc.No.11353/2021
3. For orders on Misc.No.11354/2021
4. For orders on Misc.No.11822/2021
5. For orders on Misc.No.11342/2021
6. For orders on Misc.No.11343/2021
7. For orders on Misc.No.11344/2021
8. For orders on Misc.No.6526/2020
9. For orders on Misc. No.35078/2019.
10. For orders on Misc. No.22829/2019
11. For orders on Misc. No.22831/2019
12. For hearing of Misc. No.18920/2019
13. For hearing of Misc. No.18922/2019
14. For orders on Misc. No.13614/2019
15. For orders on Misc. No.395/2019
16. For orders on Misc. No.39356/2018
17. For orders on Misc. No.39357/2018
18. For orders on Misc. No.36802/2018.
19. For hearing of case.

DATE OF HEARING: 06.05.2021.

DATE OF ORDER: 19-05-2021

Petitioner Roshan Ali Lakhani in person.
M/s Sarmad Hani and Yousuf Moulvi, Advocates for the Applicants in
C.M.A. Nos.11354, 11344 and 11822 of 2021.
Mr. Salman Talibuddin, Advocate General Sindh in CMA No.11822/2021
Mr. Khaleeq Ahmed, Advocate for Mari Petroleum.
Mr. Asim Iqbal, Advocate for SSGCL.
Mr. Abid Naseem, Advocate for OGDCL
Mr. Gul Faraz Khatak, Assistant Attorney General.
Mr. Tariq Ali Shah, Secretary, Energy Department, Government of Sindh
(Focal Person for Chief Secretary).
Mr. Ghulam Ali Brahmani, Additional Secretary (Services)

Mohammed Karim Khan Agha J. The review applications bearing Nos.11354/2021,
11344/2021 and 11822/2021 have been filed seeking a review of certain aspects of the
order of this court dated 12.04.2021.

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2. The parts of the order which a review is sought are found in the following paragraphs which are set out as under for ease of reference;

First Paragraph.

“D.C Sujawal

On the last date of hearing, DC Sujawal had filed a report which showed that he was making water storage tanks. We found his report to be prima facie not satisfactory. Today he has filed another report. According to him he has Rs. 60 Crores. Most of this money has been spent on water tanks. We found such expenditure incomprehensible. Under these circumstances, **Chief Secretary Sindh is directed to transfer DC Sujawal and replace him with CSS Officer**, who, on the next date of hearing, shall file a detailed report showing that all the works which have been carried out as well as cost estimated. Prima facie, it also appears that some of these amounts might have been embezzled. Accordingly, Mr. Taufique Ali Abbasi, Director Audit and Petroleum & Natural Resources Karachi shall carry out audit of the funds given in the Social Welfare Fund to DC Sujawal and file his report which shows whether these funds have been utilized in accordance with law and whether there might have been any embezzlement or misappropriation of the same. A copy of this order shall be sent to Chief Secretary Sindh for immediate compliance”. (bold added)

Second Paragraph.

“We have noted that where PCS officers have been posted as D.Cs there is a weakness in utilization and monitoring of social welfare funds of Oil and Gas Companies and as such we **recommend** that the Chief Secretary shall ensure that all the DCs who are dealing with funds of Rs.1.5 Crore and above are CSS officers who appear more capable in utilizing and managing the Social Welfare Funds or projects being carried out thereunder”.

3. The applicants and in particular the learned Advocate General have contended that the above two paragraphs are illegal and unconstitutional as they amount to judicial over reach as this court has entered the domain of the executive which is beyond the jurisdiction of this court. In support of their contentions they have placed reliance on unreported orders of the Supreme Court dated 27.01.2021 in the case of **Mian Irfan Bashir V DC Lahore** in CP 466L/2019 and **CEO Multan Electric Power Company Limited V Muhammed Ilyas etc** dated 22.03.2021 in Crl.P.713/2020. With regard to the first paragraph learned counsel for DC Shujawal has in particular contended that the following words in the first Paragraph are illegal and should be deleted, “**Chief Secretary Sindh is directed to transfer DC Sujawal and replace him with CSS Officer**”. Learned counsel for the other applicants has contended that the second paragraph which is general in nature needs to be reviewed as it has tended to stigmatize those whom it concerns and if a particular DC's report is not up to the mark then the Chief Secretary may take appropriate action against him under the relevant Service Laws

which govern his service. Learned Advocate general when confronted with what should be done in cases where the reports of DC's were not up to the mark contended that those DC's should be dealt with by the Chief Secretary as he deems fit in accordance with law.

4. Roshan Ali Lakhani in person has fully supported the order under review.

5. We have heard the arguments of the applicants, Roshan Ali Lakhani in person and considered the record and in particular the order under review along with the relevant law.

6. We find that the above two paragraphs do **not** amount to judicial over reach based on the particular facts and circumstances of this case and that this court has not exercised any suo moto powers in passing the order under review.

7. In the case of **Irfan Bashir** (Supra) referred to by the applicants the court found that the High Court which had been approached in connection with a notification which required the removal of sign boards then took up a completely separate issue which was not before it concerning the wearing of helmets by motor cyclists on the Mall Road and whether or not motorcyclists were in fact wearing helmets on the Mall Road and even went so far as to order petrol pumps not to provide petrol to motor cyclists who were not wearing helmets which in the view of the Supreme Court amounted to in effect a High Court exercising Suo Moto powers and even overreaching its constitutional jurisdiction.

8. In the case of **Muhammed Ilyas** (Supra) the High Court in effect directed MEPCO to appoint a particular person and on its failure to do so started contempt proceedings against MEPCO despite the person who was directed to be appointed not having the required qualifications which amounted to judicial overreach.

9. In the case before us the Supreme Court in of C.P No.46/2013, Civil Misc Application No.278-Q of 2013 and Human Rights case No.36052-S of 2013 vide order dated 27.12.13 (Supreme Court Order) made various orders/directions which were to be complied with in connection with the proper and transparent use of funds which were given to certain bodies in order to benefit the local community which arose out of funds which the Government of Pakistan/Government of Sindh received from Oil and Gas Exploration Companies (OGEC's) who had been given an exploration license in Pakistan. Such orders/directions are mainly set out in paragraphs 22 and 23 of the Supreme Court Order which are set out below for ease of reference;

22. Although the preparation of appropriate guidelines is a policy matter falling within the executive domain, our examination of the present status of collection, expenditure, administration etc. of social welfare funds and the preparation of guidelines shows that this aspect of the matter has not received the requisite attention. **The rights of the people in the funds generated on account of social welfare obligations have a direct nexus with the fundamental rights mentioned above. These funds have**

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either remained unutilized or have been under-utilized or the use of these funds has not been adequately monitored to ensure evaluation of spending. As an initial measure therefore, we direct as under:-

- a) The DG PC and the relevant Provincial Government shall ensure diligent collection and monitoring of social welfare obligations of E&P Companies.
- b) The DG PC, the relevant Provincial Government and the Local Government within the area of activities of an E&P Company shall ensure optimum utilization of social welfare funds, production bonuses and other sums such as marine research fee, as are generated on account of the contractual obligations of E&P Companies. This shall be done in an open and transparent manner by ensuring that consistent with Article 19A of the Constitution [Right to Information], the local population has available to it, all relevant information relating to such funds.
- c) The Provincial and Local Governments shall review the existing policy guidelines and, where necessary, make suitable amendments to ensure that as far as may be, one Committee be constituted for each district or tehsil/taluka to ensure coordinated and effective use of the aforesaid funds. Keeping in view the provisions of Article 140A, the Local Governments established in each tehsil/taluka be given due representation or a voice on such Committee in line with the said constitutional provision which requires "*each Province....[to] devolve political, administrative and financial responsibility and authority to the elected representatives of the Local Government*".
- d) Guidelines may be framed by the Federal and Provincial Governments in reasonable detail so that social welfare obligations can be monitored and the expenditure of funds can be examined in an open and transparent manner. The Committee for utilization of funds should;
 - i) ensure that the social welfare obligations of E&P Companies are fulfilled;
 - ii) proposed schemes receive due publicity and inputs from the final recipients and beneficiaries or their representatives;
 - iii) evaluate progress and completion of welfare schemes;
 - iv) have public hearings for receiving local level inputs in respect of selection, completion etc. of welfare schemes.
- e) Once every sixth months, the DCO shall effect the publication of a notice online and in the most widely-read newspaper in the district, announcing a public hearing to solicit any comments or reservations that the inhabitants of the district in general, and the purported direct beneficiaries of the scheme in particular, may have with regard to the schemes completed, initiated, or ongoing during the preceding six months. A list of all such schemes shall be included in the public notice along with their location, budget and current status.
- f) Such notices for public hearings shall be sent to all district level trade organizations, chambers of commerce, Bar Associations and other prominent organizations and social welfare organizations. Notices shall also be sent to the provincial ombudsmen. Such public notices of the public hearings shall also be promptly placed on the website of the district government, if it has one.

- g) A report in respect of completed schemes shall be sent to the Federal and Provincial Ombudsmen and to the Human Rights cell of this Court.
- h) The DG PC shall prepare a comprehensive account of the amounts due to each district from the various E&P Companies operating therein under the heads of social welfare obligations, production bonuses, and, if applicable, marine research fee. The estimated figures for royalties due to each district may also be included in this account. A statement of this account shall be made within 45 days and shall be submitted in Court. The account shall be displayed in Urdu, English and regional languages on the website of the MPNR.
- i) The DG PC shall solicit half-yearly reports from all license/lease holders in respect of their social welfare obligations towards the local community, including among other things, the locations, budgets and status of schemes completed, ongoing, or initiated during those six months.
- j) The DG PC shall use his enforcement powers under PCAs actively and diligently to seek compliance with the terms of the PCAs.
- k) The Ministry of Petroleum and Natural Resources shall ensure implementation of the Prime Minister's directive of 15.09.2003 and provide gas to *"all the surrounding localities/villages falling within the radius of 5km of all Gas Fields, on priority basis"* as directed, in accordance with law.

23. The DC PC shall coordinate with the Provincial Chief Secretaries and/or concerned Secretaries with the object of preparing a report in line with the aforesaid directives. The report preferably should contain suggestions/recommendations which are practical and workable keeping in view the objective that the social welfare funds are only collected and properly spent for the benefit of beneficiaries i.e. the local people in concerned district. For the purpose of collating information/data in a readily usable form and for analysis of the same, the help of Professor Anjum Nasim, Senior Research Fellow, Institute of Development and Economic Alternatives, an experienced academic, may be sought by the PG PC. (bold added)

10. The Supreme Court vide order dated 05.07.2018 in the case of **Roshan Ali Lakhani V DG Petroleum Concession** in Crl.O.P.No.112 of 2015 and C.P No.46 of 2013 sent the Supreme Court Order to this court to ensure its implementation in the following terms:-

ORDER

None is present for the petitioner. Dismissed for non-prosecution.

Crl. O.P. 112 of 2015:-

We have heard the petitioner. Let this matter be sent to the High Court of Sindh who shall, in terms of Article 187(2) of the Constitution, take into consideration and decide if any direction issued by this Court vide order dated 27.12.2013 has been implemented in letter and spirit or is being violated. Disposed of accordingly.

11. When this court first took up this matter nearly three years ago it was found that most of the directions in the Supreme Court Order were being violated and that there was little to show on the ground in respect of spent social welfare funds of OGEC's. For almost the last 3 years since 16.08.2018 this court by showing judicial restraint and through its various orders has been implementing the Supreme Court Order as directed by the Supreme Court and due to the efforts of this court and the concerned stake holders steady progress has been made in implementing the Supreme Court Order even in respect to the provision of gas to villages within 5 KM's of an OGEC's site.
12. The essential facts of the case for considering these review petitions are that the Government of Pakistan, Ministry of Petroleum supervise funds from the OGECs under their licenses which share is paid directly by the OGEC's to respective Deputy Commissioners (DC's) in a district where an OGEC is operating. These funds are then to be given for the use of a committee which after advertising among the public of the area which projects are required/necessary within the framed policy of what these funds can be used for then sets about utilizing the funds for the selected projects for the benefit of the local community. It is the responsibility of each DC in each area to ensure that the funds are used for projects mentioned in the policy, that the projects e.g. libraries are required by the community and that the projects are carried out timely and are for the use of the local community as a whole and that the funds (which do not come from the Federal Government or the Government of Sindh but the OGEC's) are spent judiciously and that no corruption, misappropriation or embezzlement is made from such funds which are to be used to build projects of good quality at the proper rates for the benefit of the local people most of whom are not well off.
13. It is with regard to this aspect of the implementation of the Supreme Court Order that the order under review was passed. In effect DC's file reports before this court in respect of the use of the social welfare funds and the projects which they are developing out of such funds and this court reviews whether such projects are in accordance with the guidelines, have been chosen in a transparent manner with the object of benefiting the local community and in particular to ensure that the funds are used properly and not misused in connection with the selected projects.
14. Whilst going through such reports we found a number of them to be unsatisfactory which lead to us passing the paragraphs in the order under review which paragraphs we reproduced above.
15. Thus, we find that we are neither exercising Suo Moto powers nor passing orders unrelated to the issue at hand which might amount to judicial over reach. Our orders flow from the obligation of this court to implement the Supreme Court Order. If a DC is not coming up to the mark in the use of the funds which the OGEC's have provided him in

continuation of our obligation to implement the Supreme Court Order (which would amount to non implementation of that aspect of the Supreme Court Order) we consider the paragraphs under review to be wholly justified and do not amount to judicial overreach or exercise of any Suo Moto powers by us.

16. Be that as it may we consider our role to be that of implementing the Supreme Court Order in letter and spirit and in an expeditious manner and pass orders accordingly and it is not our intention to enter into controversies which may slow down / adversely effect the implementation of the Supreme Court Order or adversely effect any DC's rights under the service laws as this is not a matter of ego for us but of ensuring the implementation of the Supreme Court Order as expeditiously as possible for the benefit of the local community as we are sure all parties especially the Government of Sindh would agree. Thus having considered the arguments of the learned counsel for the applicants and the via media suggested by them we review our order to the following extent;

Paragraph relating to DC Sujawal.

"D.C Sujawal

On the last date of hearing, DC Sujawal had filed a report which showed that he was making water storage tanks. We found his report to be prima facie not satisfactory. Today he has filed another report. According to him he has Rs. 60 Crores. Most of this money has been spent on water tanks. We found such expenditure incomprehensible. Under these circumstances, **Chief Secretary Sindh is directed to transfer DC Sujawal and replace him with CSS Officer**, who, on the next date of hearing, shall file a detailed report showing that all the works which have been carried out as well as cost estimated. Prima facie, it also appears that some of these amounts might have been embezzled. Accordingly, Mr. Taufique Ali Abbasi, Director Audit and Petroleum & Natural Resources Karachi shall carry out audit of the funds given in the Social Welfare Fund to DC Sujawal and file his report which shows whether these funds have been utilized in accordance with law and whether there might have been any embezzlement or misappropriation of the same. A copy of this order shall be sent to Chief Secretary Sindh for immediate compliance."

The directions to transfer DC Sujawal and replace him with a CSS officer shall be deleted however rest of the paragraph remain in full force and effect. The following shall also be added to that paragraph.

"However the Chief Secretary may take such disciplinary proceedings or other actions as he deems fit (if any) in accordance with law after reviewing DC Shujawal's report and the audit report to follow which may include without limitation removing him and replacing him with another officer after following the due process of law".

General Para.

This paragraph is deleted in its entirety and is replaced by the following paragraph.

“The Chief Secretary or his focal person is **directed** to review and countersign all reports of DC’s (which he shall call to be submitted before him within 2 weeks of the next date of hearing of the main case) who are dealing with funds of **Rs.5 Crore and above** and his counter signature shall confirm that all works are in accordance with the framed policy; that the works have been carried out in a timely manner using good quality material and workmanship; that the cost of such works is in accordance with the general market cost; that there has been no misuse or wastage of funds; that there has been no embezzlement or misappropriation of funds and if the Chief Secretary is of the view that the report submitted to him is unsatisfactory he shall not counter sign the same and shall bring to the courts attention its short comings and what action (if any) he proposes to take against the concerned DC. With respect to unsatisfactory reports as found by the Chief Secretary after a careful review he may initiate disciplinary proceedings against the concerned DC or take any other action which he deems appropriate in accordance with law which may include the transfer and replacement of the concerned DC after following the due process of law or his recommendation to the Chief Minister to do so”.

The following shall also be added to the order under review.

“Social welfare projects shall generally **not** in the future include road construction or repair unless this is for exceptional reasons which are recorded in writing as such projects are not likely to benefit the local community as a whole a majority of whom are less well off and probably do not even own a car. Such work is to be carried out from the budget of the concerned Department. The priority should be the utilization of such funds on public hospitals, equipment for such hospitals and the medical needs of the local community, public schools and education, provision of clean and fresh drinking water and parks and other leisure activities for the local community and other projects within the policy guidelines.”

17. A copy of this order shall be sent to Chief Secretary and his focal person (Mr. Tariq Ali Shah) for implementation and compliance.

18. The above review petitions stand disposed of in the above terms.